

REMARKS

Reconsideration of the above-identified application in view of the preceding amendments and the following remarks is respectfully requested.

Claims 9, 11-13, 15, 17-19 and 21 are pending in the subject application. Claims 1-8 were previously canceled without prejudice after withdrawal as being directed to non-elected subject matter. Applicants reserve the right to prosecute the canceled subject matter in a later filed co-pending application. Claims 10, 14, 16 and 20 have also been canceled without prejudice. Claims 9 and 15 have been amended. No new matter has been added to the subject application by this amendment, nor have any new issues been raised.

CLAIM REJECTIONS

Rejections - 35 U.S.C. §112

Claims 9, 10 and 14 were rejected under 35 U.S.C. §112, second paragraph. In this regard and so as to expedite prosecution of the subject application, Claims 10 and 14 have been canceled without prejudice. Withdrawal of the rejection under 35 U.S.C. §112 is therefore respectfully requested.

Rejection Under 35 U.S.C. §103

Claims 9-11 and 14 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,905,489 to Mantell in view of U.S. Publication 2006/0079925 to Kerr.

Mantell et al. disclose a laparoscopic insertion device in the form of a Verres needle that includes a cannula 88 disposed within a tubular housing 78. The cannula 88 has a distal opening 94. The cannula 88 is configured for spring biased movement between a retracted position shown in Fig. 6 and an extended position shown in Fig. 4, together with the obturator 38 to which it is “mechanically joined.” (Col. 7, ln. 23). “During the piercing, obturator 38 and the

cannula wall 88 are pushed by the patient's tissue to a retracted position as shown in Figs. 5 and 6. Such pushing causes the spring 44 to compress as well. Once the needle 86 enters a target area, such as the chest cavity or the abdomen of the human patient, the pressure exerted by the tissue is absent causing the spring 44 to expand which results in cannula wall 88 to move to the extended position shown in Figs 1 and 4." (Col. 7, lns. 14-22). "Upon noticing that the obturator 38 has moved to the extended position . . . insufflation gas is then directed into the abdomen.

Thus, insufflation gas that flows out of opening 94 would not flow between the cannula wall 88 and the interior wall of tubular housing 78. Instead, that gas would flow directly into the abdominal cavity. Consequently, a pressurized gas seal could not be formed around the cannula 88 within the tubular housing 78. as suggested by the Examiner at Page 4 of the Office Action. Mantell et al. thus fail to provide the requisite teaching or suggestion to obviate the invention defined by amended Claim 9, which recites, among other features, forming a gas seal around the surgical instrument within the lumen of the trocar so as to directly contact the surgical instrument.

Turning to the Kerr publication, the Examiner cites paragraph [0074] to support the notion that Kerr discloses that insufflation gas is also used to seal around surgical instruments within the trocar. This position is wholly misplaced. Actually, Kerr states that "[t]he dissector may also enable port 76 to be secured into position with the body cavity in a snug manner to advantageously eliminate or otherwise substantially minimize any leakage of carbon dioxide gas ultimately used to insufflate a body cavity or to seal about tubes or other feedthroughs for use by a surgeon." In other words, it is the snug fit of the port 76 that provides a seal to prevent gas leakage, not the insufflation gas itself. Indeed, the device described in the Kerr publication is without any means to create a pressurized gas seal around a surgical instrument within the trocar.

Therefore, the Kerr publication fails to cure the above-noted deficiencies of the Mantell et al. reference. Since neither Mantell et al. nor Kerr disclose or suggest, either alone or in combination, in whole or in part, the inventive method defined by Claim 9, Claims 9 and 11 are not rendered obvious by that combination of references. Withdrawal of the rejection under 35 U.S.C. §103(a) is therefore respectfully requested.

Claims 12 and 13 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,905,489 to Mantell in view of U.S. Publication 2006/0079925, and further in view of U.S. Patent No. 6,309,382 to Garrison et al.

The deficiencies of Mantell et al. and Kerr are set forth above with respect to Claim 9. Garrison et al. disclose a method and apparatus for performing a procedure in a patient's thoracic cavity. The Garrison et al. patent does not disclose or suggest a method or apparatus for performing surgical procedures that require maintenance of an operative pneumoperitoneum (i.e., laparoscopic surgical procedures). Indeed, Garrison et al. recognize that their apparatus is not designed to operate at the high pressures used in laparoscopic surgical procedures, which are typically between 15 and 20 mm Hg (see col. 4, lns. 33-36; col. 7, ln. 66 - col. 8, ln. 2). In essence, Garrison et al. teach away from apparatus and methods employed in laparoscopic surgical procedures requiring a pneumoperitoneum, and instead focus on surgical procedures performed within the thoracic cavity. Accordingly, Garrison et al. has a wholly different purpose than subject invention. Moreover, Garrison et al. fail to overcome the noted deficiencies of Mantell et al. and Kerr.

For example, Garrison et al. do not disclose or suggest, among other things, forming a pressurized gas seal around a surgical instrument within the lumen of a trocar, wherein the pressurized gas is directed from the surgical instrument into the lumen of the trocar.

Accordingly, Claims 12 and 13 are not rendered obvious for at least the same reasons set forth above with respect to Claim 9.

Claims 15, 17-19 and 21 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,905,489 to Mantell in view of U.S. Patent No. 6,309,382 to Garrison et al.

As noted above, Mantell et al. disclose a Verres needle that includes a retractable cannula 88 disposed within a tubular housing 78. The cannula 88 has a distal opening 94 and is configured for movement between a retracted position and an extended position. In the extended position of Fig. 4, insufflation gas is directed from opening 94 into the abdomen. Consequently, a pressurized gas seal can form around the cannula 88 within the tubular housing 78, as suggested by the Examiner.

Garrison et al. disclose a method for performing a thoracic procedure. They do not disclose or suggest a method for performing surgical procedures that require maintenance of an operative pneumoperitoneum (i.e., laparoscopic surgical procedures). Indeed, Garrison et al. recognize that their apparatus is not designed to operate at the high pressures used in laparoscopic surgical procedures, which are typically between 15 and 20 mm Hg (see col. 4, lns. 33-36; col. 7, ln. 66 - col. 8, ln. 2). In essence, Garrison et al. teach away from apparatus and methods employed in laparoscopic surgical procedures requiring a pneumoperitoneum, and instead focus on surgical procedures performed within the thoracic cavity. Accordingly, Garrison et al. has a wholly different purpose than subject invention.

Moreover, Garrison et al. fail to overcome the noted deficiencies of Mantell et al. For example, Garrison et al. do not disclose or suggest, among other things, forming a pressurized gas seal around a surgical instrument within the lumen of a trocar, wherein the pressurized gas is

directed from the surgical instrument into the lumen of the trocar so as to directly contact the surgical instrument.

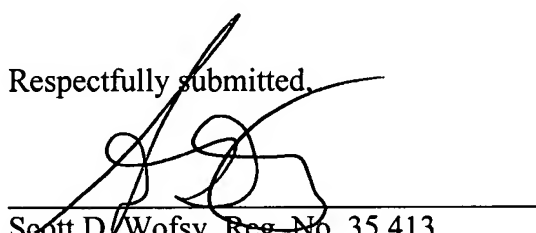
In sum, neither Mantell et al. nor Garrison et al. disclose or suggest, either alone or in combination, in whole or in part, the invention defined by Claim 15. Accordingly, Claims 15, 17-19 and 21 are not rendered obvious by the combination of Mantell et al. in view of Garrison et al.

CONCLUSION

It is respectfully submitted that all of the claims now under consideration in this application, namely Claims 9-15, 17-19 and 21, are directed to patentable subject matter, and allowance thereof is earnestly solicited.

If the Examiner believes that a telephonic or personal interview would resolve any remaining or outstanding matters, the undersigned may be contacted at the telephone number provided below.

Respectfully submitted,



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